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8  
9 **UNITED STATES BANKRUPTCY COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**  
11 **SANTA ANA DIVISION**

12 In re

13 YOUR NEIGHBORHOOD  
14 URGENT CARE, LLC,

15 Debtor and Debtor in  
16 Possession.

Case No. 8:17-bk-14545-TA

Chapter 11

**OPUS BANK'S MOTION TO  
DISMISS THE DEBTOR'S  
BANKRUPTCY CASE UNDER  
11 U.S.C. §§ 305 AND 1112**

[Notice of Motion and Declarations of  
Steven M. Spector and Anthony J.  
Napolitano concurrently filed]

**Hearing:**

Date: December 13, 2017  
Time: 10:00 a.m.  
Place: United States Bankruptcy Court  
Courtroom 5B  
411 West Fourth Street  
Santa Ana, California 92701

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1 TO THE HONORABLE THEODOR C. ALBERT, UNITED STATES BANKRUPTCY  
2 JUDGE, THE DEBTOR, ITS COUNSEL AND ALL INTERESTED PARTIES:

3 Opus Bank, senior secured creditor of Your Neighborhood Urgent Care, LLC (“YNUC”),  
4 debtor and debtor in possession in the above-captioned chapter 11 bankruptcy case, and affiliate  
5 of Hoag Urgent Care – Tustin, Inc., and its affiliated debtors in the chapter 11 bankruptcy cases  
6 jointly administered under Case No. 8:17-bk-13077 (collectively, the “Original Debtors”),<sup>1</sup>  
7 respectfully moves the court for entry of an order dismissing YNUC’s chapter 11 bankruptcy case  
8 under 11 U.S.C. §§ 305 and 1112 as follows.

9 I.

10 **INTRODUCTION**

11 This Court is no stranger to the insurmountable obstacles present in the Original Debtors’  
12 bankruptcy cases. This Court has been advised that the Original Debtors’ “white knight” has  
13 failed to materialize to bring about the sale of the Original Debtors’ assets. Moreover, the Court  
14 is well aware that a sale as is presently being advertised would not even be sufficient to pay the  
15 Original Debtors’ secured creditor, Opus Bank, in full. And the Court is highly skeptical that the  
16 Original Debtors can meet the requirement of this Court for bringing about a sale of their assets  
17 by the December 13, 2017.

18 At the October 12, 2017 hearing on Opus Bank’s motion to dismiss the Original Debtors’  
19 bankruptcy cases, the Court acknowledged the significant hurdles that the Original Debtors faced  
20 in consummating a sale to their “white knight”—the second “white knight”—Marque Medical.  
21 Nevertheless, the Court gave the Original Debtors until December 13, 2017 in order for the  
22 Debtors to:

- 23 1. Transform Marque Medical’s non-binding letter of expression of interest  
24 into a formal stalking-horse purchase offer;

25  
26  
27 <sup>1</sup> The Original Debtors include Hoag Urgent Care – Tustin, Inc. (Case No. 8:17-bk-13077-TA), Hoag Urgent Care –  
28 Huntington Harbour, Inc. (Case No. 8:17-bk-13078-TA); Hoag Urgent Care – Orange, Inc. (Case No. 8:17-bk-  
13079-TA); Hoag Urgent Care – Anaheim Hills, Inc. (Case No. 8:17-bk-13079-TA); Cypress Urgent Care, Inc. (Case  
No. 8:17-bk-13089-TA); and Laguna Dana Urgent Care, Inc. (Case No. 8:17-bk-13090-TA).

2. Obtain an order approving bidding procedures to enable a sale to occur at the December 13, 2017 hearing;
3. Commence a contested matter or adversary proceeding capable of effectuating the assignment of the Debtors sub-subleases with respect to the Hoag Debtors' facilities; and
4. File on or before November 17, 2017 a motion to approve the sale of the Original Debtors' assets or an application seeking authorization to file such motion on shortened time.

*See, e.g., Stipulation for Entry of Scheduling Order Regarding Sale Procedures and Continued Hearing on Cash Collateral, Dismissal and Other Related Matters* [Hoag Docket No. 266].

These tasks that the Original Debtors faced in mid-October bordered on the impossible. With the passage of time and several recent missteps by the Original Debtors, these tasks have now ripened into the impossible. Finally, the Original Debtors' lease assignment motion has been set for November 29, 2017. It would seem that the filing of the YNUC case was done to facilitate that lease assignment process. If, however, the Original Debtors are unsuccessful with their efforts respecting lease assignments on November 29, 2017, dismissal of the Original Debtors' and YNUC's bankruptcy cases is warranted. In short, the experiment failed. The Court gave YNUC and the Original Debtors a chance. There is no bankruptcy purpose in keeping these chapter 11 cases alive. Rather, all parties interests are better served in receivership where the Receiver will administer the assets.

Specifically, this case offers no benefit to the creditors of the estate or to the sole equity holder, Dr. Amster. It is apparent, unfortunately, that the Original Debtors' cases are being operated and administered solely for the benefit of Dr. Amster, his daughter and their professionals at the expense of Opus Bank and Newport/Hoag Memorial. Enough is enough. Under the circumstances, there is no rationale benefit to be gained from keeping YNUC in chapter 11. Accordingly, dismissal is appropriate under sections 305(a)(1) and 1112(b) of the Bankruptcy Code.

II.

**STATEMENT OF FACTS**

**A. Opus Bank provided secured financing to YNUC and the Original Debtors.**

*1. The Hoag Borrowers' secured obligations to Opus Bank.*

On September 26, 2013, Hoag Urgent Care-Tustin, Inc., Hoag Urgent Care-Huntington Harbour, Inc., Hoag Urgent Care-Orange, Inc. and Hoag Urgent Care-Anaheim Hills, Inc., as borrowers (collectively, the "Hoag Borrowers"), and Opus Bank, as lender, executed a Business Loan Agreement, which provided that Opus Bank would make advances to the Hoag Borrowers up to the principal amount of \$2,320,000.00 in accordance with the terms of the loan agreement (the "Hoag Loan Agreement"). A copy of the Hoag Loan Agreement is included within Exhibit 1 to the concurrently filed Declaration of Steven M. Spector (the "Spector Decl.").

On September 26, 2013, to evidence the loans referenced in the Hoag Loan Agreement, the Hoag Borrowers executed a Promissory Note pursuant to which the Hoag Borrowers promised to pay Opus Bank the principal sum of \$2,320,000.00 million together with interest on the unpaid principal balance until paid in full (the "Hoag Note"). A copy of the Hoag Note is included within Exhibit 1 to the Spector Decl.

To secure the obligations under the Hoag Note and the Hoag Loan Agreement, the Hoag Borrowers, as grantor, and Opus Bank, as lender, entered into a Commercial Security Agreement on September 26, 2013 (the "Hoag Security Agreement"), whereby the Hoag Borrowers granted Opus Bank a security interest in essentially all of their personal property and other assets including, without limitation, all cash and cash equivalents, accounts, chattel paper, deposit accounts, documents, equipment, general intangibles, goods, instruments, inventory, investment property, letter-of-credit rights, sums on deposit in any collateral account, and any items in any lockbox, as further defined and described in the Hoag Security Agreement (collectively, the "Hoag Collateral"). A copy of the Hoag Security Agreement is included within Exhibit 1 to the Spector Decl.

Opus Bank perfected its security interest in the Hoag Collateral by, among other things, filing a UCC-1 Financing Statement on September 30, 2013, with the California Secretary of State, as file number 13-7380125585 (the “Hoag Financing Statement”). A copy of the Hoag Financing Statement is included within Exhibit 1 to the Spector Decl.

2. *The Cypress-Laguna Borrowers’ secured obligations to Opus Bank.*

On September 26, 2013, Cypress Urgent Care, Inc., Laguna Dana Urgent Care Inc. and “YNUC”, as borrowers (collectively, the “Cypress-Laguna Borrowers”), and Opus Bank, as lender, executed a Business Loan Agreement, which provided that Opus Bank would make advances to the Cypress-Laguna Borrowers up to the principal amount of \$1,435,000.00 in accordance with the terms of the loan agreement (as amended, the “Cypress-Laguna Primary Loan Agreement”). A copy of the Cypress-Laguna Primary Loan Agreement is included within Exhibit 2 to the Spector Decl.

On September 26, 2013, to evidence the loans referenced in the Cypress-Laguna Primary Loan Agreement, the Cypress-Laguna Borrowers executed a Promissory Note pursuant to which the Cypress-Laguna Borrowers promised to pay Opus Bank the principal sum of \$1,435,000.00 together with interest on the unpaid principal balance until paid in full (as amended, the “Cypress-Laguna Primary Note”). A copy of the Cypress-Laguna Primary Note is included within Exhibit 2 to the Spector Decl.

On September 26, 2013, the Cypress-Laguna Borrowers, as borrowers, and Opus Bank, as lender, executed that certain Business Loan Agreement, which provided that Opus Bank would make advances to the Cypress-Laguna Borrowers up to the principal amount of \$250,000.00 in accordance with the terms of the loan agreement (as amended, the “Cypress-Laguna Secondary Loan Agreement”). A copy of the Cypress-Laguna Secondary Loan Agreement is included within Exhibit 2 to the Spector Decl.

On September 26, 2013, to evidence the loans referenced in the Cypress-Laguna Secondary Loan Agreement, the Cypress-Laguna Borrowers executed that certain Promissory Note pursuant to which the Cypress-Laguna Borrowers promised to pay Opus Bank the principal sum of \$250,000.00 together with interest on the unpaid principal balance until paid in full (as

1 amended, the “Cypress-Laguna Secondary Note”). A copy of the Cypress-Laguna Secondary  
2 Note is included within Exhibit 2 to the Spector Decl.

3 To secure the obligations under the Cypress-Laguna Primary Note, the Cypress-Laguna  
4 Primary Loan Agreement, the Cypress-Laguna Secondary Note and the Cypress-Laguna  
5 Secondary Loan Agreement, the Cypress-Laguna Borrowers, as grantor, and Opus Bank, as  
6 lender, entered into two separate Commercial Security Agreements on September 26, 2013 for  
7 each of the outstanding notes (collectively, the “Cypress-Laguna Security Agreements”), whereby  
8 the Cypress-Laguna Borrowers granted Opus Bank a security interest in essentially all of their  
9 personal property and other assets including, without limitation, all cash and cash equivalents and  
10 the proceeds of the following (collectively, the “Cypress-Laguna Cash Collateral”): accounts,  
11 chattel paper, deposit accounts, documents, equipment, general intangibles, goods, instruments,  
12 inventory, investment property, letter-of-credit rights, sums on deposit in any collateral account,  
13 and any items in any lockbox, as further defined and described in the Cypress-Laguna Security  
14 Agreement (collectively, the “Cypress-Laguna Collateral”). Copies of the Cypress-Laguna  
15 Security Agreements are included within Exhibit 2 to the Spector Decl.

16 Opus Bank perfected its security interest in the Cypress-Laguna Collateral by, among  
17 other things, filing UCC-1 Financing Statements on October 3, 2013, with the California  
18 Secretary of State, as file numbers 13-7380725167 and 13-7380725420 (collectively, the  
19 “Cypress-Laguna Financing Statements”). Copies of the Cypress-Laguna Financing Statements  
20 are included within Exhibit 2 to the Spector Decl.

21 3. *Dr. Amster’s guaranty of the obligations under the Hoag Note and the*  
22 *Cypress-Laguna Notes.*

23 On September 26, 2013, Dr. Amster, as guarantor, executed various Commercial  
24 Guaranty agreements under which Dr. Amster unconditionally and irrevocably guaranteed to  
25 Opus Bank the timely payment and performance of any and all indebtedness of the Hoag  
26 Borrowers and the Cypress-Laguna Borrowers. Copies of the Commercial Guaranty agreements  
27 with respect to the Hoag Borrowers and with respect to the Cypress-Laguna Borrowers are  
28 included within Exhibits 1 and 2 to the Spector Decl., respectively.



**B. The Non-Bankruptcy Court Actions Against YNUC and the Original Debtors.**

**1. Opus Bank's state court action against the Hoag Borrowers.**

On March 30, 2017, Opus Bank filed a state court action against the Hoag Borrowers, Dr. Amster, and others, in the California Superior Court, County of Orange, designated as *Opus Bank v. Hoag Urgent Care-Tustin, Inc., et al.*, Case No. 30-2017-00911945-CU-BC-CJC (the "Hoag State Court Action"). A copy of the Verified Complaint commencing the Hoag State Court Action is attached as Exhibit 1 to the Spector Decl.

**2. Opus Bank's state court action against the Cypress-Laguna Borrowers.**

On March 30, 2017, Opus Bank filed a state court action against the Cypress-Laguna Borrowers, YNUC, Dr. Amster, and others, in the California Superior Court, County of Orange, designated as *Opus Bank v. Laguna-Dana Urgent Care, Inc., et al.*, Case No. 30-2017-00912132-CU-BC-CJC (the "Cypress-Laguna State Court Action"). A copy of the Verified Complaint commencing the Cypress-Laguna State Court Action is attached as Exhibit 2 to the Spector Decl.

**C. The Original Debtors commence their jointly-administered bankruptcy cases.**

On August 2, 2017 (the "Petition Date"), the Original Debtors each filed their own voluntary chapter 11 petitions. On August 4, 2017, the Court approved the Original Debtors' use of cash collateral on an interim basis. At the August 29th hearing on continued use of cash collateral, the Court expressed its frustration with the Original Debtors' reporting. Consequently, on September 6, 2017, the Court granted Opus Bank's motion to excuse David P. Stapleton, the state-court appointed receiver (the "Receiver") from his turnover obligations.

**D. The Original Debtors' "White Knight" has fallen off of its horse and has been trampled to death.**

Since the inception of the Original Debtors' cases, Opus Bank and others have expressed substantial doubt over the "realness" of the Original Debtors' purported "white knight." Indeed, at the August 4<sup>th</sup> hearing on the Original Debtors' first-day motions, Original Debtors' counsel proclaimed that: (1) "we are going to endeavor very quickly to either get his buyer in as a stocking (sic) horse," *See* Original Debtors' 8/4 Transcript, p. 17, ln. 6-8; (2) "we are going to act

1 quickly here. You're not going to find that any of these Debtors lag," 8/4 Transcript, p. 19, ln. 3-  
2 5; and (3) "our proverbial white knight, will likely be in front of your Honor, on one respect or  
3 another, very soon." 8/4 Transcript, p. 20, ln. 1-3. That "white knight" never materialized as the  
4 Original Debtors conceded twenty-five days later at the continued hearing on the use of cash  
5 collateral. But lo and behold, the Original Debtors proclaimed at that hearing that they had  
6 another "white knight"—Marque Medical—waiting to carry the day.

7 Unfortunately, the Original Debtors' provided Opus Bank with Marque Medical's "letter  
8 of intent" that lacked the specificity and definitiveness that one would expect let alone require in  
9 a sale transaction. Indeed, the letter of intent was so ambiguous, it was in actuality nothing more  
10 than non-binding expression of interest. Opus Bank raised its concerns and was presented with a  
11 revised "letter of intent" on September 18, 2017 that suffered from substantially the same  
12 infirmities.

13 Instead of ripening into a full-fledged stalking-horse asset purchase agreement as would  
14 be commonly expected in a section 363 sale, the Original Debtors and Marque Medical regressed  
15 back to the initial August 27, 2017 "expression of interest" and used that as the basis for their  
16 *Motion to Approve Stalking House Bidder and Related Bid Protections and to Establish*  
17 *Procedures for the Sale of Estate Assets* [Hoag Docket No. 243] (the "Sale Procedures Motion").  
18 The Debtors filed the Sale Procedures Motion on October 19, 2017 (*i.e.*, 78 days after the petition  
19 date) that could only be described as a "shoot-the-moon" effort to bring about a sale of the  
20 Original Debtors' assets—an effort that this Court admonished against at the first-day hearing.  
21 8/4 Transcript, p. 21, ln. 15-16 ("[I will] not let you burn up the value here in some shoot-the-  
22 moon effort on behalf of Amster or anyone else.").

23 Notwithstanding that the Sale Procedures Motion (i) sought to establish a non-binding  
24 letter of intent as the basis for bids, (ii) had an inadequate description of the assets to be sold,  
25 (iii) failed to consider alternative transactions, and (iv) had excessive breakup fees, the Debtors  
26 proceeded with the bid procedures until they couldn't proceed any more.

27 On November 18, 2017, the Original Debtors filed their *Motion for Order (A) Amending*  
28 *the Order Approving Stalking Horse Bidder and (B) Approving Amended Bidding and Sale*

1 *Procedures* [Docket No. 308]. In this motion, the Original Debtors disclose that their stalking-  
2 horse bidder, Marque Medical, “was unwilling to move forward with the acquisition of all of the  
3 Debtors on the terms proposed . . . .” Hoag Docket No. 308, p. 6, ln. 10-12. The reason was due  
4 to the difficulties that the Debtors faced in obtaining a clean assignment “all the way up the  
5 chain” of the leases for the three Hoag facilities. “As a result, Marque withdrew the Marque LOI  
6 as presented.” Hoag Docket No. 308, p. 6, ln. 12-13.

7 The “white knight” has faded into the sunset yet again. Unfortunately, it is perfectly clear  
8 that the Debtors have no sale, let alone one that would satisfy Opus Bank’s \$4.0 million in  
9 secured debt let alone one that resolves the landlord issues. The sale has ripened into the  
10 impossible.

11 **E. The belated bankruptcy filing of YNUC is a last-ditch effort of the Original**  
12 **Debtors and Dr. Amster to game the system for more time.**

13 From the outset of the Original Debtors’ cases, Opus Bank and others scratched their  
14 heads wondering why didn’t the Original Debtors’ affiliate, YNUC, file a chapter 11 bankruptcy  
15 petition along with the Original Debtors. After all, YNUC sits between the Hoag Debtors and  
16 Newport Healthcare, LLC as the sublessee with respect to the Hoag Debtors (who are sub-  
17 sublessees) with respect to the three Hoag Urgent Care premises. It would only make sense for  
18 YNUC to have filed a bankruptcy case. Clearly, the Original Debtors and YNUC were aware of  
19 these lease issues at the time the Debtors filed their bankruptcy cases. Indeed, this Court in its  
20 October 12th tentative ruling even suggested that a potential solution for the Debtors’ sub-  
21 sublease woes could be a bankruptcy filing by YNUC.

22 One supposes (based on other pleadings on file) that Dr. Amster has already been  
23 considering a bankruptcy proceeding of the master lessee, an entity reportedly he  
24 controls. Maybe that can solve the problem somehow if the two estates act in  
tandem as the barrier to §365 assumption would, in that case, seemingly be  
overcome (or at least mitigated).

25 10/12 Tentative Ruling, p. 23 of 31. Yet, inexplicability, the Original Debtors proceeded with the  
26 filing of their *Motion to Assume Unexpired Leases for Non-Residential Real Property Pursuant to*  
27 *11 U.S.C. 365* [Hoag Docket No. 268] (the “Lease Assignment Motion”), which sought to assign  
28 the leasehold interests of a non-debtor entity. Naturally, there came a strong rebuke from

1 Newport Healthcare, which objected to, among other things, the failure of the Original Debtors  
2 to proceed as they must by way of adversary proceeding under Rule 7001(2) of the Federal Rules  
3 of Bankruptcy Procedure. Rule 7001(2) requires an adversary proceeding “to determine the  
4 validity, priority, or extent of a lien or other interest in property . . . .” FED. R. BANKR. P.  
5 7001(2). Again, the borderline impossible has firmly ripened into the impossible.

6 Having slept on its rights for the past ninety days, and now faced with a futile exercise in  
7 the remaining time afforded by this Court, YNUC commenced its own chapter 11 petition on  
8 November 17, 2017—over three and a half months after the filing of the Original Debtors.  
9 Curiously, the Original Debtors did not mention the YNUC filing at all in their motion to amend  
10 the bidding procedures order. Opus and others have been vigilant in protecting their rights, the  
11 Original Debtors have slumbered on theirs.

### 12 III.

### 13 ARGUMENT

14 With no stalking-horse bidder, no mechanism for resolving the Hoag Debtors’ lease  
15 issues, and the imposition of the automatic stay in the YNUC bankruptcy case, there is no  
16 possible way for the Original Debtors to accomplish what this Court has required by the  
17 December 13, 2017 hearing. Indeed, the Original Debtors have not even filed their Sale Motion  
18 or the Application for Order Shortening Time on such Sale Motion by the requisite November 17,  
19 2017 deadline as required by this Court’s Scheduling Order. *See* Hoag Docket No. 281. Opus  
20 Bank and others have suffered enough at the hands of Dr. Amster, YNUC and the Original  
21 Debtors. The YNUC filing has further complicated the Original Debtors’ efforts to bring about a  
22 “quick sale”—since, paradoxically, a sale that will not likely even yield an amount sufficient to  
23 cover the amount of Opus Bank’s secured debt.

24 There is no legitimate reason for the Original Debtors’ to perpetuate the impossible. With  
25 no stalking-horse bidder, no sale motion, and no potential for bringing about a sale because of the  
26 leasehold issues, the YNUC case and the Original Debtors’ case should be dismissed on  
27 December 13, 2017. At that time, it will be clear that the Original Debtors’ cannot succeed with  
28 the sale of their assets and that the ploy of the YNUC filing does not cure their incurable

1 procedural and substantive deficiencies.

2 **A. There is no purpose for continuing the chapter 11 cases of YNUC or the**  
3 **Original Debtors.**

4 Section 1112(b) permits a party in interest to seek dismissal of a debtor's chapter 11  
5 bankruptcy case for "cause," which is defined in section 1112(b)(4) to include "gross  
6 mismanagement of the estate" and "unauthorized use of cash collateral substantially harmful to 1  
7 or more creditors." 11 U.S.C. § 1112(b)(4)(B) and (D). Moreover, the list provided for in section  
8 1112(b)(4) is not exhaustive.<sup>2</sup> The Court may consider other factors, such as the best interests of  
9 creditors, in determining whether "cause" for dismissal exists. *In re Staff Inv. Co.*, 146 B.R. 256,  
10 260-61 (Bankr. E.D. Cal. 1992). "It is not necessary that the interest of every creditor actually  
11 favor conversion. . . . The interest of a single creditor with a large enough claim will suffice." *Id.*  
12 at 261 (citing *Goodrich v. Lines*, 284 F.2d 874, 877 (9th Cir. 1960)). In granting a motion to  
13 dismiss, the court in *Capital Management Co. v. Allison Corp. (In re Allison Corp.)*, 9 B.R. 827,  
14 829 (Bankr. S.D. Cal. 1981) observed that "[t]he debtor or its equity holders are the last category  
15 of persons or entities which the code is designed to benefit."

16 At the outset of the Original Debtors' cases, the Original Debtors assured the Court that  
17 the Original Debtors' had a "white knight" purchaser for the Original Debtors' assets and that an  
18 imminent sale would be forthcoming.

19 To date, the Original Debtors have not presented anything to this Court that remotely  
20 looks like a real sale offer or a motion to approve the same. "Waiting until the case has  
21 conclusively foundered on the shoals of confirmation is often expensive and inefficient in the  
22 extreme and, as a general policy, is contraindicated by section 1112(b)." 7 COLLIER ON  
23 BANKRUPTCY ¶ 1112.04[5][c] (16th ed. rev. 2011).

24 The Original Debtors' "quick sale" bankruptcy cases have turned into a four-month saga  
25 where the Original Debtors are no closer to presenting a sale to the Bankruptcy Court than they  
26 were at the inception of this case. Moreover, during this period the Original Debtors' financial  
27

28 <sup>2</sup> See 11 U.S.C. § 102(3), which provides that "[i]n this title 'includes' and 'including' are not limiting."

1 performance has deteriorated as the Original Debtors have failed to meet their revenue projections  
2 or tame their expenses. The post-petition reduction of the receivable balance, the post-petition  
3 increase in the payables balance, and the ability of the Original Debtors to delay making  
4 payments on their projected expenditures has resulted in the deterioration of Opus Bank's  
5 collateral position. This failure justifies dismissal of YNUC's and the Original Debtors'  
6 bankruptcy cases.

7 **B. Dismissal is also appropriate under Section 305(a) of the Bankruptcy Code.**

8 Section 305 of the Bankruptcy Code provides that "[t]he court, after notice and a hearing,  
9 may dismiss a case under this title or may suspend all proceedings in a case under this title, at any  
10 time if— (1) the interests of creditors and the debtor would be better served by such dismissal or  
11 suspension." 11 U.S.C. § 305(a)(1). Relief under section 305(a)(1) is proper only if the interests  
12 of both the "creditors and the debtor" would be "better served" by dismissal or suspension. The  
13 Bankruptcy Appellate Panel for the Ninth Circuit has formulated the proper section 305(a)(1)  
14 analysis as follows:

15 As the statutory language and legislative history demonstrate, the test under  
16 section 305(a) is not whether dismissal would give rise to a substantial prejudice  
17 to the debtor. Nor is the test whether a balancing process favors dismissal.  
18 Rather, the test is whether both the debtor and the creditors would be "better  
served" by a dismissal.

19 *Eastman v. Eastman (In re Eastman)*, 188 B.R. 621, 624-25 (B.A.P. 9th Cir. 1995)

20 The **absence of a true bankruptcy purpose** (*e.g.*, debt adjustment, breathing spell from  
21 creditors, and need for discharge and fresh start) is a significant factor in favor of granting section  
22 305(a)(1) relief. *Grogan v. Garner*, 498 U.S. 279, 286 (central purpose of Bankruptcy Code "is  
23 to provide a procedure by which ... debtors can reorder their affairs, make peace with their  
24 creditors, and enjoy 'a new opportunity in life with a clear field for future effort, unhampered by  
25 the pressure and discouragement of preexisting debt'"). Courts have used this factor to further  
26 support a dismissal of an involuntary case that was filed not to favor all creditors and the estate  
27 but to obtain a disproportionate advantage for petitioning creditor's position. In a voluntary case,  
28 however, the absence of a bankruptcy purpose might not be sufficient to support abstention if the

1 case was in the debtor's interest.

2 Dismissal or suspension of a case may be appropriate when the bankruptcy case  
3 constitutes a two-party dispute between the debtor and a single creditor. *In re Spade*, 258 B.R.  
4 221, 229 (Bankr. D. Colo. 2001) (case is "little more than a two party collection dispute" between  
5 creditor and debtor). For instance, in *In re Rookery Bay, Ltd.*, 190 B.R. 949 (Bankr. M.D. Fla.  
6 1995), a judgment creditor filed an involuntary case against the debtor in a single asset case. An  
7 appeal from the petitioning creditor's judgment was pending. All other creditors had agreed to  
8 defer collection of their debts from the debtor. Upon the debtor's motion for abstention under  
9 section 305(a)(1), the court suspended any further proceedings in the case until the two-party  
10 dispute was resolved in state court. *In re Jr. Food Mart of Arkansas, Inc.*, 241 B.R. 423, 427  
11 (Bankr. E.D. Ark. 1999) (case dismissed because it was essentially a two-party dispute between  
12 the trustee for the debtor's creditors and the debtor).

13 Here, there is no purpose in keeping YNUC or the Original Debtors in chapter 11. There  
14 is no benefit to the creditors of the estates or to YNUC and the Original Debtors' sole equity  
15 holder, Dr. Amster. The Original Debtors' "white knight" offer would have produced insufficient  
16 funds to pay Opus Bank in full. Opus Bank has a secured claim that the Debtors' acknowledge  
17 exceeds \$3.4 million and Opus Bank believes exceeds \$3.8 million. There is no hope for any  
18 recovery to the unsecured creditors or the equity holder. It is apparent that the only purpose for  
19 keeping these cases alive is to continue to pay Dr. Amster and his daughter their salaries for  
20 managing the Original Debtors. Under the circumstances, there is no benefit to be gained from  
21 keeping the YNUC or the Original Debtors in chapter 11 for the purpose of liquidating these  
22 assets. Accordingly, dismissal is appropriate under section 305(a)(1) of the Bankruptcy Code.

23 **IV.**

24 **CONCLUSION**

25 Opus Bank submits that sufficient cause exists under sections 1112(b) and 305(a) of the  
26 Bankruptcy Code for the Court to dismiss YNUC's bankruptcy case, and respectfully requests  
27 that the Court enter an order dismissing the case and granting such other relief as is just and  
28 proper.

1 DATED: November 22, 2017

BUCHALTER, a Professional Corporation

2  
3 By: /s/ Anthony J. Napolitano

4 BARRY A. SMITH  
5 STEVEN M. SPECTOR  
6 ANTHONY J. NAPOLITANO

7 Attorneys for Secured Creditor Opus Bank  
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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
1000 Wilshire Blvd., Suite 1500, Los Angeles, CA 90017.

A true and correct copy of the foregoing document entitled (*specify*): **OPUS BANK'S MOTION TO DISMISS THE DEBTOR'S BANKRUPTCY CASE UNDER 11 U.S.C. §§ 305 AND 1112** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) November 22, 2017, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Lobel Weiland Golden Friedman LLP - Email: jgolden@wglp.com  
United States Trustee (SA) - ustpregion16.sa.ecf@usdoj.gov Santa Ana, CA 92701-4593  
Michael J Hauser - Email: michael.hauser@usdoj.gov  
Anthony J Napolitano - anapolitano@buchalter.com, IFS\_filing@buchalter.com; salarcon@buchalter.com

☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) November 22, 2017, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

See attached Service List

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) November 22, 2017, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Hon. Theodor C. Albert  
U.S. Bankruptcy Court  
411 W. Fourth Street, Suite 5085  
Santa Ana, CA 92701

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

November 22, 2017  
*Date*

Shirley Lee  
*Printed Name*

/s/Shirley Lee  
*Signature*

---

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

**2. SERVED BY UNITED STATES MAIL:**

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Your Neighborhood Urgent Care, LLC  
PO Box 8979  
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**U.S. Trustee**  
United States Trustee (SA)  
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Michael J Hauser  
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Fax : 714-338-3421  
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**List of 20 Largest Creditors Holding Unsecured Claims**

Cornman and Swartz  
P.O. Box 7789  
Newport Beach, CA 92658

Opus Bank  
c/o Barry Smith Buchalter  
A Professional Corporation  
1000 Wilshire Blvd., Suite 1500  
Los Angeles, CA 90017

Signature Analytics  
105920 W. Ocean Air Drive, Suite 220  
San Diego, CA 92130

TrackPoint  
Business Advisors  
8 Corporate Park, Suite 130B  
Irvine, CA 92606

Choice Health Med & Animal Sciences  
[Address Unknown]

Provider Healthcare, LLC  
4252 South Highland Drive, Suite 104  
Salt Lake City, UT 84124

Access Medical Management  
2325 W. Victory Blvd., Ste. 1  
Burbank, CA 91506

Hanover Insurance Group  
PO Box 580045  
Suite 525  
Charlotte, NC 28258-0045

ICW Group  
PO Box 509039  
San Diego, CA 92150-9039

Robert Daily, APC  
2020 Del Amo Blvd.  
Suite 100  
Torrance, CA 90501

Adams, Evens & Ross, Inc.  
For the Benefit of All Star #254  
37460 Sixes Road, Suite 126  
Canton, GA 30114

AT&T Mobility  
P.O. box 5014  
Carol Stream, IL 60197-5014

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2700 N. Main Street  
Santa Ana, CA 92705

Winthrop Couchot  
Professional Corp  
660 Newport Center Drive  
4th Floor  
Newport Beach, CA 92660

Guardian  
P.O. Box 95101  
Chicago, IL 60694

Hall & Company  
111 Pacifica, Ste. 300  
Irvine, CA 92618

Incredible Marketing, Inc.  
310 Goddard  
Suite 200  
Irvine, CA 92618

American Express  
P.O. Box 981535  
El Paso, TX 79998-1535

Risk Advisory Group  
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Huntington Beach, CA 92647

Jason James  
Exchange Bank  
Loan Service Center  
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